

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON THE
TRIBAL LAW AND ORDER ACT: FIVE YEARS LATER: HOW HAVE THE JUSTICE SYSTEMS IN
INDIAN COUNTRY IMPROVED?**

DECEMBER 2, 2015

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Lawrence Roberts and I am the Principal Deputy Assistant Secretary of Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide testimony before this Committee on the Tribal Law and Order Act (TLOA), Pub. L. No. 111-211 (2010). On July 29, 2010, President Obama signed TLOA into law with the goal of improving public safety in Indian Country. I am pleased to be here before this Committee today, more than five years after the law's enactment, to provide an update on the Bureau of Indian Affairs Office of Justice Services (BIA-OJS) work with Tribes to implement TLOA.

The health, welfare, and safety of our Tribal communities are priorities of the Obama Administration. TLOA has provided Tribes additional resources and has fostered greater self-determination and self-governance of their justice systems. Law enforcement and public safety in the United States is largely administered on a local level and TLOA has helped ensure that this is also the situation in Indian Country.

Indian Country still faces many public safety challenges. As the Committee knows, far too many tribal communities are experiencing the devastating effects of alcohol and drugs. However, the Administration is encouraged by the progress made and believes that public safety has and will continue to improve in Indian Country. Updates on implementation and other related services follow.

Law Enforcement Training Standards

TLOA promoted greater flexibility in training law enforcement officers patrolling Indian Country. TLOA provided that law enforcement training standards could be satisfied through training at a State or tribal police academy, a State, regional, local, or tribal college or university, or other training academy that met appropriate standards. BIA-OJS has responded by permitting greater flexibility in training of police officers serving Indian Country. Five years later, training of law enforcement officers in Indian country is more flexible which results in a larger pool of eligible applicants and a better trained workforce.

The Indian Police Academy developed the three-week "Basic Police Officer Bridge Training Program" to meet relevant federal training standards for state trained officers serving Indian

Country. The bridge program offers federal law and BIA-OJS policy courses including training on jurisdiction in Indian Country and TLOA. State-trained officers submit a basic training waiver to the academy for review and approval for reciprocity of minimum training standards. Approved training allows applicants to attend the basic bridge program instead of the fifteen-week basic police program. To date, the Indian Police Academy has provided ten sessions of the three-week “Basic Police Officer Bridge Training Program” and has trained 108 law enforcement officers in the program. Overall, the program has an 89 percent graduation rate.

Section 231(b) of TLOA provided that BIA-OJS develop policies and procedures to enter into deputation agreements for the purpose of issuing BIA Special Law Enforcement Commissions (SLECs). SLECs allow full time certified Tribal, Federal, state, and local enforcement officers to assist BIA in the enforcement of Federal criminal statutes in Indian Country. These policies and procedures were developed and enacted on January 25, 2011. Additionally in 2011, BIA-OJS and DOJ partnered to update the Criminal Jurisdiction in Indian Country (CJIC) training curriculum. The course was completely redesigned to provide current information on law enforcement, jurisdiction and legal topics; all of which are critical to the successful response, investigation and prosecution of federal crimes in Indian Country. The new two and half day CJIC training curriculum was piloted in Oklahoma in March 2012, followed by a subsequent pilot in California in April 2012 based on fine-tuning revisions. The standard CJIC curriculum was then rolled out nationwide.

The course is taught by Indian Country AUSAs and Tribal Liaisons from DOJ. This is consistent with TLOA’s provisions regarding the duties of Assistant United States Attorney Tribal Liaisons, including: "Conducting training sessions and seminars to certify special law enforcement commissions to tribal justice officials and other individuals and entities responsible for responding to Indian country crimes." The CJIC curriculum and materials were disseminated to the United States Attorney Offices with Indian Country in their jurisdiction for familiarization, since their personnel serve as the actual course instructors. DOJ also reviews the CJIC course curriculum and materials annually, updating legal issues and case law.

In 2015, BIA-OJS and DOJ collaborated to create and implement a CJIC Master Schedule approach by disseminating a CJIC training schedule for the upcoming year, including locations and dates. This allows for advance planning by all agencies involved, including law enforcement partners that require training and DOJ Indian Country AUSAs and Tribal Liaisons within the various districts.

BIA-OJS also assists Tribes with background checks during the hiring process of tribal law enforcement officers. Section 231(a)(4)(A) requires BIA-OJS, when requested by a Tribe, to conduct background checks for tribal law enforcement and correctional officials no later than 60 days after the date of receipt of the request. BIA-OJS has developed a new background policy and provided background and adjudication training throughout the country. During FY 2015 OJS provided a total of fifty-eight (58) background investigation for twenty-eight (28) tribes.

Data/Information Sharing

TLOA recognized that accurate data is essential for the development of effective public safety strategies. It also recognized that data is a fundamental tool of law enforcement and the need to

share such data among law enforcement agencies. TLOA addressed this issue in a variety of ways. It provided for BIA-OJS to share with DOJ all relevant crime data received from tribal law enforcement agencies. BIA-OJS has accomplished this requirement. Today, Tribes and BIA agencies provide data to the FBI's Uniform Crime Report (UCR) data collection process through electronic submissions. BIA-OJS took a lead role in achieving a seamless transition for Indian Country. BIA-OJS coordinated multiple training sessions for tribes and BIA agencies on the FBI's UCR Program. Furthermore, BIA-OJS followed up with individual technical assistance and additional training to ensure that deployment of the electronic reporting was a success for Tribes.

Further, Section 211(b)(2)(D)(13) provided for BIA-OJS to provide technical assistance and training to tribal law enforcement officials to gain access and input authority to utilize the National Criminal Information Center and other national crime information databases. BIA-OJS has been working with DOJ to identify needs in Indian Country regarding access to databases with the FBI's Criminal Justice Information Services (CJIS) Division. BIA-OJS has engaged directly with tribal leaders to discuss their needs and provide information on CJIS programs.

There have been a number of successes in implementing the TLOA information sharing provisions. For example, the Sycuan Tribal Police Department's officers, all of whom are commissioned by the Bureau of Indian Affairs-Office of Justice Services (BIA) as special deputy officers, were approved to access the state's robust law enforcement telecommunications system, CLETS — a first in the state of California. In FY 2015, BIA-OJS received authority to perform name-based, emergency background checks for tribal social service entities that require such information for child placement purposes, via federal criminal databases housed within the FBI's CJIS Division. BIA-OJS is piloting a project wherein tribes may contact BIA-OJS to obtain name based criminal history information in exigent circumstances where a fingerprint based check is not feasible.

Section 211(b)(2)(D)(10) provided for BIA-OJS to develop and provide dispatch and emergency and E-911 services. BIA-OJS has procured state of the art dispatch equipment to integrate communications systems and record radio and telephone traffic at 17 direct service agencies. Five agencies will be complete by calendar year end with remainder complete in calendar 2016. Technical assistance is also provided to tribes, when requested, for dispatch, coverage and equipment requirements. BIA-OJS also provides tribes with technical assistance in acquiring frequencies for tribally operated and owned systems.

Finally, section 211 of TLOA provided for BIA-OJS to develop an annual report of unmet staffing needs of the law enforcement, corrections, and tribal court programs. In April of 2013 BIA-OJS submitted a report to Congress detailing the allocation and expenditure of FY 2010 funds appropriated to the BIA for public safety and justice programs, as well as the estimated unmet needs for public safety and justice programs. The scope of the April 2013 report was limited to tribes providing public safety funding by BIA and agency office locations that expended public safety and justice funds to provide direct services to tribes. The Department is providing a comprehensive update to the April 2013 report which is in the final stages of departmental review.

Section 211 also provided for BIA-OJS to report on: “the formula, priority list or other methodology used to determine the method of disbursement of funds for the public safety and justice programs administered by the Office of Justice Service.” To address this part of TLOA, a description of the BIA-OJS funding methodology was incorporated into the FY 2016 President’s Budget Request. Since the beginning of the Obama Administration in FY 2008, just over \$100 million in BIA public safety appropriation increases have been allocated using this methodology and the resulting impact on violent crime in Indian Country shows that with increased resources Tribes are able to better protect their communities. Applying programmatic expertise and data-driven analysis, our distribution method enables BIA to target additional resources to reservations with higher violent crime rates and larger service populations, indicators of the severity of public safety needs. Additionally, BIA-OJS is currently discussing the viability of a tribal advisory group. The advisory group would focus on public safety and tribal justice funding, and seek tribal perspectives on current funding distribution methods.

Tribal Courts

BIA-OJS has focused on strengthening Tribal Courts through a number of different initiatives. TLOA amended the Tribal Justice Support Act which now identifies funding for specific tribal court personnel positions through Tribal Justice Systems appropriated funds. To date, BIA-OJS has provided funding for: 25 Tribal Judges, 20 Tribal Prosecutors, 15 Tribal Defenders, 5 Tribal Guardians ad-Litem and provided funding for training and technical assistance for tribal court support staff as well as training for litigators in tribal courts.

Based upon the need to eradicate illegal narcotics in Indian Country, BIA-OJS was tasked with the responsibility, in coordination with the Attorney General, to ensure that BIA-OJS and tribal law enforcement as well as judicial personnel have access to training regarding the investigation and prosecution of offenses relating to illegal narcotics and alcohol and substance abuse prevention treatment. Since 2011, BIA-OJS has conducted 20 Tribal Court Trial Advocacy Training sessions which provide hands-on mock trial court training by skilled litigators including: federal prosecutors (AUSAs), tribal prosecutors (including those cross designated as SAUSAs), as well as federal defenders and tribal defenders.

To date, over 600 tribal court personnel have been trained on illegal narcotics and domestic violence prosecution, as well as prosecution of sexual assault crimes as identified under TLOA in Section 241 and 262. These training sessions include discussions regarding the specific TLOA enhanced sentencing provisions. Moreover, BIA-OJS is working with the Department of Justice and the Administrative Office for U.S. Courts to better coordinate specialized training for those tribal court personnel ready to participate in the TLOA enhanced sentencing provisions under the Indian Civil Rights Act.

Since 2011, BIA-OJS has provided over 75 state of the art recording devices to tribal courts in an effort to comply with the requirement that all tribal courts implementing TLOA must record criminal proceedings. Further, BIA-OJS has provided funding allowing tribal courts to impose alternative sentences. For example, alcohol ankle bracelet monitoring programs have been used to reduce incarceration and address the severity of alcohol-related crimes. In 2012, the Lower Brule Sioux Tribe in South Dakota reported a 98% success rate against reoffending in instances

where the devices were used. BIA-OJS is also coordinating with DOJ and IHS to work on providing training for tribal judges on alternative sentencing options.

Under TLOA, Tribes located in PL 280 states, where jurisdiction is the primary responsibility of the State, have the opportunity to request the federal government assume concurrent jurisdiction over certain crimes on the tribe's reservation. Some Tribes requesting concurrent jurisdiction have received tribal court assessments. The Department has provided funding to assist those tribal courts with addressing infrastructure stability which is essential for enhanced sentencing purposes, such as drafting criminal codes and rules of evidence, making rules of criminal procedures available to the public, providing qualified legal counsel to defendants, employing law trained judges and recording any criminal proceedings.

Corrections/Treatment

TLOA also sets forth requirements to address incarceration and substance use disorders in Indian Country. Section 211(b) of TLOA directed BIA-OJS to develop a long term plan for tribal detention programs.

To be responsive to this, the BIA published a plan for tribal detention programs in August 2011. Additionally, the BIA Corrections Handbook, First Edition, was developed and implemented in February of 2012. The handbook includes detailed policy and procedures that support the BIA Detention Guidelines and OJS has implemented these standards throughout the years. BIA-OJS continues to provide additional technical assistance to Tribes for the start-up and activation of newly constructed facilities, negotiating contracts with state and local jails for adult and juvenile bed space, inspection and certification processes, corrective action plan implementation, and assistance with grant applications.

Section 241 of TLOA identified the need for training on alcohol and substance use prevention and treatment and identified a mission of eradicating criminal acts caused by alcohol and substance use. In response, BIA-OJS created the Diversion and Re-entry Division (DRD) within the Tribal Justice Support Directorate. The purpose of the new Division was to transform current institutional practices and create alternatives to incarceration which build on existing treatment service continuums in tribal communities, as well as provide access to long-term detention-based treatment for all direct-service tribes at Hardin, Montana, Yuma, Arizona and Casper, Wyoming. These facilities are outstanding treatment and recovery resources for tribes that fill a critical need in Indian Country, expanding the overall continuum of services directly available to tribes.

The focus of the BIA-OJS initiative is to effectively braid opportunities and services of other federal agencies to address alcohol and substance use-related offenses. Importantly, BIA-OJS has worked with tribal courts and correctional facilities to administer a nationally recognized screening and assessment instrument (GAIN). The instrument is currently at three pilot sites and BIA-OJS has provided the training needed to administer the instrument. This instrument and new protocol for offender placement into service, service engagement and preparation for community re-entry services has the potential for serving as the cornerstone for linking all human service elements within tribal communities onto a common data infrastructure. BIA-OJS will generate a detailed analysis and year-end report of the Recidivism Reduction Initiative that includes a

predictive analysis of the risk for offender recidivism, and will serve the need for a common data infrastructure within Indian Country.

Conclusion

Thank you for holding this hearing on the Tribal Law and Order Act and for providing the opportunity to discuss what we have done over the past five years since TLOA's enactment into law. We will continue to work closely with our Tribal, Federal, and State partners to address public safety issues in Indian Country and to further fulfill the goals of TLOA.

I am available to answer any questions the Committee may have.